IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 20TH JULY 2007 / 29TH ASHADHA 1929

RSA.No. 488 of 2007()

AS.120/2003 of SUB COURT, KASARAGOD
OS.311/1999 of ADDL.MUNSIFF, KASARAGOD
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: APPELLANT/APPELLANT/PLAINTIFF

THE PLANTATION CORPORATION OF KERALA LTD
REP. BY ITS MANAGING DIRECTOR,
HEAD OFFICE AT KOTTAYAM.

BY ADV. SRI.T.N.ARUNKUMAR (PERUMBAVOOR)
SRI.T.K.SAJEEV

RESPONDENTS: RESPONDENT/RESPONDENT/DEFENDANT

MADHAVA BHAT, AGED 76 YEARS,
S/O GOPALAKRISHNA BHAT, AGRICULTURIST,
RESIDING AT MOLAKKALU IN PADRE
VILLAGE, P.O.VANINAGAR, KASARAGOD TALUK,
KASARGOD DISTRICT.

BY

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 20/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

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R.S.A. NO. 488 OF 2007

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Dated this the 20th day of July, 2007

JUDGMENT

Plaintiff in O.S.311/1999 on the file of Munsiff Court, Kasaragod is the appellant. Defendant is the respondent. Appellant instituted the suit seeking a decree for permanent prohibitory injunction contending that plaint schedule property forms part of the cashew plantation and as per order in G.O.(MS) 117/78/RD dated 19.1.1978 plaint schedule property was directed to be assigned and transferred to the appellant Corporation and eventhough possession was handed over to the appellant, survey and issue of patta was done only partly and the appellant is in actual possession and enjoyment of the property and respondent is not in possession of the property and he attempted to trespass into the property and therefore respondent is to be restrained by permanent prohibitory injunction from trespassing

into the plaint schedule property. Respondent filed a written statement contending that appellant is not in possession of the property and the improvements in the plaint schedule property was effected by respondent and it forms part of the 3 acres in R.S.217/1A assigned in his favour as per order dated 26.9.1966 and even before the assignment deed, he has been in possession of the property and in such circumstance, appellant is not entitled to the decree sought for.

2. Learned Munsiff on the evidence of PW1, DW1 and Exts.B1 to B3 and C1 dismissed the suit holding that appellant did not establish their right and possession. It was challenged before Sub Court, Kasaragod in A.S.120/2003. Learned Sub Judge on reappreciation of evidence confirmed the findings of learned Munsiff and dismissed the appeal. It is challenged in the second appeal.

3. Learned counsel appearing for appellant was heard.

4. Apart from contending that the plaint

schedule property was directed to be transferred as per G.O.(MS) 117/78/RD dated 19.1.1978 to the appellant Corporation and appellant Corporation obtained possession of the property, no material whatsoever was produced before the trial court to establish that appellant has been in possession of the property. It is on appreciation of the evidence, courts below concurrently found that the appellant failed to prove the possession. In such circumstance, that factual finding cannot be interfered in exercise of the powers of this court under section 100 of the Code of Civil Procedure. No substantial question of law is involved in the appeal. The appeal is dismissed.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006